

The United Nations Human Rights Council:
Repeating Past Mistakes

Brett D. Schaefer
Jay Kingham Fellow in International Regulatory Affairs
The Margaret Thatcher Center for Freedom
The Heritage Foundation

Testimony before the Committee on International Relations
United States House of Representatives
Washington, D.C.
September 6, 2006

Mr. Chairman, thank you for providing me with the opportunity to testify on the state of the new United Nations Human Rights Council (HRC) and how it compares with its predecessor, the United Nations Commission on Human Rights (CHR). With permission, I would like my statement submitted for the record.

Since the very birth of the United Nations, protecting and advancing fundamental human rights has been one of the primary objectives of the organization. The drafters of the Charter of the United Nations included a pledge by member states “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.”¹ U.N. treaties, such as the Universal Declaration on Human Rights, which the General Assembly passed in 1948, form the core of international standards for human rights.

Yet the U.N.’s record in promoting fundamental human rights in recent times has been one of failure and inaction. No institution illustrated this failing more than the U.N. Commission on Human Rights. As the premier human rights body in the U.N. system, the CHR was charged with holding “public meetings to review the human rights performance of States, [adopting] new standards and [promoting] human rights around the world.”² Sadly, the CHR devolved into a feckless organization that human rights abusers use to block criticism or action to promote human rights.³ Two prominent examples of politicization and the selectivity by the Commission are:

- **Countries with poor human rights records successfully sought out seats on the Commission to block scrutiny.** For instance, members with dubious human rights records elected to the Commission in recent years included Algeria, China, Cuba, Pakistan, Russia, Saudi Arabia, Sudan, Syria, Vietnam and Zimbabwe. Libya served as chairman of the Commission in 2003, despite its ties to the Lockerbie airliner bombing and its own domestic human rights abuses.⁴ The U.S. ambassador walked out of the Commission in 2004 after Sudan’s election to the commission despite its role in Darfur. As noted by Secretary-General Kofi Annan, “the Commission’s capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism. In particular, States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others.”⁵
- **The Commission on Human Rights routinely singled out Israel for discriminatory treatment.** For instance, the Commission’s agenda devoted a special item to censuring Israel, debates in the Commission focused disproportionately on condemning Israel, country-specific resolutions against Israel were equivalent to the combined total adopted against all other countries, and emergency special sessions and special sittings were frequently

¹ Charter of the United Nations, preamble, at <http://www.un.org/aboutun/charter/index.html> (September 1, 2006).

² United Nations, “UN in Brief: What the UN Does for Justice, Human Rights and International Law,” at http://www.un.org/Overview/uninbrief/chapter3_humanrights.html (September 1, 2006).

³ In part, this was a result of the size of the commission, which at 53 members was often criticized as too big to act decisively. The CHR grew from 18 countries in 1946 to 21 in 1961, 32 in 1966, 43 in 1979, and 53 in 1992.

⁴ Richard Waddington, “Libya Elected to Chair U.N. Human Rights Body,” Reuters, January 20, 2003, at <http://www.freerepublic.com/focus/news/825808/posts>, (September 1, 2006).

⁵ “In larger freedom: towards development, security and human rights for all,” Report of the Secretary-General, at <http://www.un.org/largerfreedom/chap5.htm>, (September 1, 2006).

dedicated to condemning Israel.⁶ By contrast, issues such as the human rights violations in Sudan, China, Cuba, and other nations were subject to minimal scrutiny.

The disrepute of the CHR grew to the point where even Secretary-General Kofi Annan acknowledged, “We have reached a point at which the Commission’s declining credibility has cast a shadow on the reputation of the United Nations system as a whole, and where piecemeal reforms will not be enough.”⁷ The Secretary-General went on to recommend replacing the CHR with a new, smaller Human Rights Council that would review the human rights practices of all of U.N. member states. The Council was to be a standing body able to meet when necessary with stronger standards for membership, such as being elected by two-thirds of the General Assembly and possessing strong record on human rights, and be charged with reviewing the human rights of every U.N. member state. Thus the stage was set for a new, more effective United Nations body to address human rights. Sadly, this historic opportunity was squandered as the United Nations fell victim to the political infighting that all too often afflicts that body.

THE FIRST FAILED TEST

The 2005 World Summit Outcome Document did follow through on the Secretary-General’s proposal to replace the Commission with a new Human Rights Council. However, the Outcome Document contained few details beyond assigning the Council responsibility for “promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner” and instructing it to “address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon [and] promote effective coordination and the mainstreaming of human rights within the United Nations system.”⁸ All details of the Council, including its mandate, operations, size, membership, working methods and procedures were left to subsequent negotiation in the General Assembly.

Negotiations in the General Assembly fell considerably short of proposals by the Secretary-General, non-governmental organizations, and the United States and other countries interested in making the body more effective than the Commission. Specifically:

- **The Council has no criteria for membership other than geographical representation.** Rather than adopt strong criteria to prevent human rights abusers from sitting on the new Council, member states are merely instructed to “take into account” a candidate’s human

⁶ “The Struggle against Anti-Israel Bias at the UN Commission on Human Rights,” Analysis and Commentary from UN Watch in Geneva, Issue 138, January 4, 2006, at <http://www.unwatch.org/site/apps/nl/content2.asp?c=bdKKISNqEmG&b=1314451&ct=1766305>, (September 1, 2006).

⁷ “Secretary-General’s Address to the Commission on Human Rights,” Secretary-General, Office of the Spokesman, April 7, 2005, at <http://www.un.org/apps/sg/sgstats.asp?nid=1388> (September 1, 2006). Also see Mark P. Lagon, Deputy Assistant Secretary for International Organization Affairs, U.S. Department of State, “The UN Commission on Human Rights: Protector or Accomplice?” testimony before the Subcommittee on Africa, Committee on International Relations, U.S. House of Representatives, April 19, 2005, at <http://www.state.gov/p/io/rls/rm/44983.htm> (September 1, 2006).

⁸ “Human Rights Council,” 2005 World Summit Outcome, General Assembly Resolution A/RES/60/1, October 24, 2005, p. 33, at <http://www.un.org/summit2005/>, (September 1, 2006).

rights record when they vote. The lack of membership criteria leaves the Council open to infiltration and manipulation by the world's worst human rights abusers. Not even states under Security Council sanction are automatically excluded.

- **Members of the Council are elected by an absolute majority of the General Assembly, not the two-thirds majority sought by the Secretary-General and the U.S.** Each country must get at least 97 votes in the General Assembly.⁹ This is a small improvement over the process for the CHR. Commission members were selected by the 54 countries of the Economic and Social Council, which were chosen by the General Assembly with little regard for human rights. ECOSOC rubber-stamped slates of candidates proposed by the five U.N. regional groups that usually included only as many countries as there were openings. The two-thirds requirement would have set a higher hurdle for membership and made it harder for countries with dubious human rights records to win seats on the Council with the intention of undermining the new body from within.
- **The resolution set a higher bar to suspend a HRC member – a vote of two-thirds of the General Assembly – than the simple majority necessary to win a seat.** While there is a provision for suspending a Council member that commits gross and systematic violations of human rights, that step can be taken only with the agreement of two-thirds of the members of the General Assembly. Not even 50 percent of the General Assembly could agree that Sudan was guilty of human rights violations in November 2005.
- **While the Council is charged with conducting a universal periodic review, the conclusions of the review were not tied to a mandatory outcome.** Even if the review finds numerous and serious human rights abuses, neither the Council nor the General Assembly is required to take action.
- **The Council is only marginally smaller than the Commission, from 53 members to 47.** This opens the door to states with questionable human rights records. Instead of a small body designed to attract the best citizens of each regional group, the Council has a large membership that requires a larger number of candidates.
- **Special sessions of the Commission can be called by only one-third of the Council's membership.** Hailed as an improved capacity to deal with urgent human rights situations, the composition of the new Council makes it likely that special sessions will be politically driven. This concern was borne out during the inaugural meeting of the Council, which was immediately followed by a special session to censure Israel.

These failings led the U.S. to vote against the HRC in the General Assembly. “Absent stronger mechanisms for maintaining credible membership, the United States could not join consensus on this resolution,” explained U.S. Ambassador to the U.N. John Bolton. “We did not have sufficient confidence in this text to be able to say that the HRC would be better than its

⁹ Only 96 votes were required in May 2006. However, with Montenegro joining the U.N. as a new member state in June 2006, there are now 192 member states.

predecessor.”¹⁰ Significantly, well-known human rights abusers Burma, China, Cuba, Ethiopia, Libya, Saudi Arabia, Sudan, Syria, and Zimbabwe all voted in favor of the new Council.¹¹ The Administration announced that it would not run for a seat on the HRC in 2006 but would continue its financial support and might run for seat in 2007 if the Council proves effective.

THE SECOND FAILED TEST

The second test was the May 9 election for membership on the Council. Prior to the election, candidates offered pledges of their adherence to human rights standards and justifications for their candidacy. These public statements were in many instances Kafkaesque in their absurdity and deviance from historical record. For instance:

- The Chinese government pledged that it is “committed to the promotion and protection of human rights and fundamental freedoms of the Chinese People.... The National People’s Congress has adopted nearly 300 laws and regulations related to the protection of civil and political rights, ensuring complete freedom of the Chinese people in movement, employment, access to information, religious belief and ways of life.”¹² Yet the State Department’s Human Rights report noted that China is an authoritarian state characterized by numerous and serious human rights abuses including trafficking in women and children, restrictions on the freedom of assembly, restrictions on religious freedom, arbitrary arrest and detention among many other policies in contravention of the Universal Declaration of Human Rights.¹³
- Cuba claims that “Either in the area of civil and political rights... the Cuban people can show to the world, with deep modesty, but with full satisfaction and pride, its tremendous achievements.”¹⁴ The State Department, however, reports Cuba is a totalitarian state characterized by numerous, serious human rights abuses including arbitrary arrest and detention, limitations on freedom of speech and press, restrictions on freedom of movement, and severe restrictions on worker rights.¹⁵
- Saudi Arabia claims a “confirmed commitment with the defense, protection and promotion of human rights.... Saudi Arabia pursues the policy of active cooperation with international

¹⁰ Ambassador John R. Bolton, “Explanation of Vote by Ambassador John R. Bolton, U.S. Permanent Representative to the United Nations, on the Human Rights Council Draft Resolution, in the General Assembly,” USUN Press Release # 51, March 15, 2006, at http://www.un.int/usa/06_051.htm, (September 1, 2006).

¹¹ “General Assembly Establishes New Human Rights Council by Vote of 170 in Favour to 4 Against, with 3 Abstentions,” Department of Public Information, General Assembly Document GA/10449, March 15, 2006, at <http://www.un.org/News/Press/docs/2006/ga10449.doc.htm>, (September 1, 2006).

¹² China’s Pledge to the Human Rights Council, at <http://www.un.org/ga/60/elect/hrc/china.pdf>, (September 1, 2006).

¹³ “China (includes Tibet, Hong Kong, and Macau),” *Country Reports on Human Rights Practices - 2005*, The Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, March 8, 2006, at <http://www.state.gov/g/drl/rls/hrrpt/2005/61605.htm>, (September 1, 2006).

¹⁴ Cuba’s Pledge to the Human Rights Council, at <http://www.un.org/ga/60/elect/hrc/cuba.pdf>, (September 1, 2006).

¹⁵ “Cuba,” *Country Reports on Human Rights Practices - 2005*, The Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, March 8, 2006, at <http://www.state.gov/g/drl/rls/hrrpt/2005/61723.htm>, (September 1, 2006).

organizations in the field of Human Rights and fundamental freedoms.”¹⁶ The State Department criticized Saudi Arabia for its serious human rights failings including arbitrary arrest, discrimination toward women, restriction of worker rights, and lack of religious freedom.¹⁷

The May 9 election validated U.S. concerns that the new Council lacked sufficient criteria to prevent major human rights abusers from gaining seats. The transparently disingenuous nature of their pledges did not keep China, Cuba, and Saudi Arabia from gaining support from a majority of the General Assembly. They were joined by fellow abusers and unfree governments in Algeria and Russia.¹⁸ These countries were key players in undermining the effectiveness of the Commission on Human Rights, and so it is very likely that they will play the same role on the Council.

The General Assembly had the opportunity to prevent human rights abusers from gaining seats on the Council but did not take advantage of it. Despite promises by a number of nations to vote against human rights abusers the membership of the Council remains only marginally better than the Commission. Of the 47 new members, only 24 were ranked as “free” by Freedom House in its 2006 worldwide survey of political rights and civil liberties versus 24 on the 53 member Commission.¹⁹ The new Council includes 9 countries ranked “not free” in political and civil liberties: Algeria, Azerbaijan, Cameroon, China, Cuba, Pakistan, Russia, Saudi Arabia, and Tunisia. Only 19 Council members were ranked as “free” or “mostly free” by the 2006 *Index of Economic Freedom*, published by The Heritage Foundation and *The Wall Street Journal*, versus 18 on the Commission in 2006.²⁰

This situation should surprise no one. After all, every nation claims membership in the U.N. even though many fail to adhere to the principles embodied in the U.N. Charter, including the commitment to fundamental human rights. Indeed, many member states actively subvert those principles and repress their own populations – less than half of the United Nations member states are ranked as “free” by Freedom House in terms of political rights and civil liberties and less than half were ranked as economically “free” or “mostly free” by the *Index of Economic Freedom*. Public scrutiny and pressure surrounding the election of the Council’s first slate of

¹⁶ Saudi Arabia’s Pledge to the Human Rights Council, at <http://www.un.org/ga/60/elect/hrc/saudiarabia.pdf>, (September 1, 2006).

¹⁷ “Saudi Arabia,” *Country Reports on Human Rights Practices - 2005*, The Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, March 8, 2006, at <http://www.state.gov/g/drl/rls/hrrpt/2005/61698.htm>, (September 1, 2006).

¹⁸ While countries like Sudan and Zimbabwe chose not to run for election, nothing prevents them from running in the future. Indeed, Venezuela easily surpassed the minimum number of votes necessary to be elected to the Council, but was denied only because a two other Latin Countries garnered more votes. “General Assembly Elects 47 Members of New Human Rights Council; Marks New Beginning for Human Rights Promotion, Protection,” Sixtieth General Assembly, GA/10459, May 9, 2006, at <http://www.un.org/News/Press/docs/2006/ga10459.doc.htm>, (September 1, 2006).

¹⁹ Freedom House, “Freedom in the World 2006: Selected Data from Freedom House’s Annual Global Survey of Political Rights and Civil Liberties,” at <http://www.freedomhouse.org/uploads/pdf/Charts2006.pdf>, (September 1, 2006).

²⁰ Marc A. Miles, Kim R. Holmes, and Mary Anastasia O’Grady, *2006 Index of Economic Freedom* (Washington, D.C.: The Heritage Foundation and Dow Jones & Company, Inc., 2006), at <http://www.heritage.org/index>, (September 1, 2006).

members failed to spur conscientious behavior. We can expect little improvement as pressure and scrutiny will likely decline in future elections.

THE THIRD FAILED TEST

The Human Rights Council convened for the first time on June 19, 2006. The first session was marked by procedural issues designed to carry on many of the operations of the CHR. For instance, the Council extended the mandates of the 28 thematic and 13 country mandates established by the Commission and carried out by independent human rights experts (known as Special Procedures). The Council also established a “working group” to begin to consider how the universal periodic review of the human rights performance of all U.N. member states should operate, how often countries should be reviewed, and when to begin the reviews.

This modest action was disappointing. The extension of mandates was both good and bad. Some experts conduct important work and there was significant effort put forth by some countries to eliminate the country-specific monitors. However, not all mandates or experts are worthwhile. For instance, Jean Ziegler is the current Special Rapporteur on the Right to Food and also serves as the vice-president of the organization that grants the “Moammar Khaddafi Human Rights Prize.”²¹ Other rapporteurs have ventured far from the core functions of their mandates. The Council established an “open-ended intergovernmental working group to formulate concrete recommendations on the issue of reviewing and, where necessary, improving and rationalizing all mandates, mechanisms, functions and responsibilities.”²² It is uncertain to what extent the mandates and the rapporteurs will be scrutinized or if the Council will undertake to tighten their mandates.

The fact that the Council undertook little action toward implementing the universal periodic review was unacceptable. This process was considered the most important achievement that would keep the Council from replicating the worst weaknesses of the Commission. It is unknown whether the system that is ultimately established will conduct its assessments of human rights practices with the frequency and frankness that would make the Council a true improvement over the Commission.

A serious disappointment was the inability of the Council to adopt a resolution addressing the victims of Darfur, but the singular failure of the first Council session was the hostility of the body toward Israel. On this subject, the Council proved just as vulnerable to politicization and selective judgment as the Commission. In an extended *déjà vu* experience, the Council – led by the Organization of the Islamic Conference (OIC) repeatedly – singled out Israel for censure despite the efforts of some Western countries:

²¹ “Switzerland’s Nominee to the UN Human Rights and the Moammar Khaddafi Human Rights Prize,” A Report by UN Watch, June 20, 2006, at <http://www.unwatch.org/site/apps/nl/content3.asp?c=bdKKISNqEmG&b=1746395&ct=2667241&tr=y&auid=1788830>, (September 1, 2006).

²² “Special Procedures assumed by the Human Rights Council,” Office of the United Nations High Commissioner for Human Rights, at <http://www.ohchr.org/english/bodies/chr/special/index.htm>, (September 1, 2006).

- The Council's only substantive debate was subject to invective directed at Israel. Efforts by the OIC to focus the agenda solely on Israel were overcome. But the five topics on the agenda were led by the "human rights situation in the occupied Arab Territories, including Palestine."
- The Council's sole country-specific resolution censured Israel by a vote of 29 to 12 and adopted a decision to discuss human rights violations committed by Israel in the Palestinian territories a permanent basis in all of the Council's meetings. No mention was made of Palestinian provocations or human rights violations.²³
- The Council extended all the mandates of the Commission for specified periods, except for the "Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967" which was extended "until the end of the occupation."²⁴
- Immediately following the end of the first session, the Council held its first "Special Session" with the support of 21 out of 47 members, during which it censured Israel and decided to dispatch the Special Rapporteur on the occupied Palestinian territories on a fact-finding mission.²⁵
- The Council convened its second "Special Session" on August 11, 2006 during which it adopted a resolution 27 to 11 with 8 abstentions that strongly condemned Israel for "violations of human rights and breaches of international humanitarian law in Lebanon" and established a high-level inquiry commission for Lebanon which was immediately dispatched to the region.²⁶ There was no reference to provocations by Hezbollah beyond a vague call for "all concerned parties" to respect the rules of international humanitarian law, refrain from violence against civilians, and to treat detained combatants and civilians in accordance with the Geneva Conventions.

CONCLUSION

The hope that a new Human Rights Council would rectify the poor record of the United Nations Commission on Human Rights on holding human rights abusers to account has, sadly, proven illusory. The reformed body does not incorporate the types of reforms that would have led inevitably to a more effective body. While the HRC has the potential to be a stronger body than its discredited predecessor, such an outcome depends entirely on the actions of its members. Based on the short record of the Council, the members have turned their back on this opportunity

²³ "Report to the General Assembly on the First Session of the Human Rights Council," Human Rights Council, First session 19-30 June 2006, A/HRC/1/L.10/Add.1, July 5, 2006, at www.ohchr.org/english/bodies/hrcouncil/docs/L.10add.1.doc, (September 1, 2006).

²⁴ "Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled 'Human Rights Council'," Human Rights Council, First Session, A/HRC/1/L.6*, June 29, 2006, at <http://daccessdds.un.org/doc/UNDOC/LTD/G06/128/30/PDF/G0612830.pdf>, (September 1, 2006).

²⁵ "First special session of the Human Rights Council, 5-6 July 2006," Human Rights Council, at <http://www.ohchr.org/english/bodies/hrcouncil/specialsession/index.htm>, (September 1, 2006).

²⁶ "2nd Special session of the Human Rights Council, Geneva, 11 August 2006," Human Rights Council, at <http://www.ohchr.org/english/bodies/hrcouncil/specialsession/2/index.htm>, (September 1, 2006).

and have chosen to repeat many of the serious mistakes of the Commission. This disappointing situation underscores the wisdom of the Bush Administration in taking a wait-and-see attitude toward the Council.

The Council will convene again in September 2006 for three weeks; in December 2006 for two weeks; and in March 2007 for four weeks. All of these sessions present opportunities for the Council to review the mandates, adopt a strong universal peer review process, and distance itself from the disgraceful preoccupation with Israel that characterized its first session. Indeed, the U.S. should work with Council members to:

- **Ensure that the Council members with the worst human rights records—Algeria, China, Cuba, Pakistan, Russia, and Saudi Arabia—be the first targets of the periodic reviews.** There will be enormous pressure to water down the peer review process. One way to quickly gauge how useful the process will be is to have the countries with the worst human rights records – those most interested in whitewashing the reviews – assessed first. The quality of these reviews will be a useful tool to measure the dedication, effectiveness, and willingness of the HRC to confront human rights abusers and to resist the influence of those most determined to undermine its work. Only if the HCR conducts strong, condemnatory reviews of these well-known abusers should the U.S. consider seeking a seat in the future.
- **Maintain country-specific mandates.** Countries with poor human rights records have been transparent in their desire to have country-specific mandates minimized. They oppose them because they dislike being singled out. Some have suggested that the peer review process and the opportunity to call special sessions reduce the necessity for such mandates. However, country-specific mandates are a valuable means for addressing gross, systematic, and sustained human rights abuses by singling out individual nations and demanding action. They should not be abandoned.
- **Subject the review of mandates to a stringent process.** Too often the special rapporteurs range widely from their assigned areas. They also are subject to politicization. The review of mandates should strive to more tightly define and focus their scope to the issue under consideration.

Despite the disheartening beginning of the Council, HRC members possess the ability to change course and demonstrate that they are determined to make the body an effective advocate for fundamental human rights. Only if this occurs should the U.S. consider running for a seat on the Council. If the peer review process is inconclusive or incomplete by the spring, the U.S. should again wait a year before deciding whether to run for a seat. If the peer review process or the review of mandates continues to fall short, or the disgraceful politicization of the Council persists, it would be a telling sign that the HRC is not worth the trouble of rallying the support necessary to win a seat. Moreover, it should lead the U.S. to reconsider its financial support for the Council.

Mr. Chairman, this concludes my testimony. I would be pleased to answer any questions the committee may have.

—Brett D. Schaefer is Jay Kingham Fellow in International Regulatory Affairs in the Center for International Trade and Economics at The Heritage Foundation.

The Heritage Foundation is a public policy, research, and educational organization operating under Section 501(C)(3). It is privately supported, and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2005, it had more than 275,000 individual, foundation, and corporate supporters representing every state in the U.S. Its 2005 income came from the following sources:

Individuals	63%
Foundations	21%
Corporations	4%
Investment Income	9%
Publication Sales and Other	3%

The top five corporate givers provided The Heritage Foundation with 2% of its 2005 income. The Heritage Foundation's books are audited annually by the national accounting firm of Deloitte & Touche. A list of major donors is available from The Heritage Foundation upon request.

Members of The Heritage Foundation staff testify as individuals discussing their own independent research. The views expressed are their own, and do not reflect an institutional position for The Heritage Foundation or its board of trustees.